

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 67 OF 2005

SHRI SRIKAR KURADE, MARGAO GOA.

....Appellant

Versus

STATE THROUGH PUBLIC PROSECUTOR

....Respondent

Shri S. G. Bhobe, Advocate for the Appellant.

Shri S. N. Sardessai, Public PROsecutor for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 20th December, 2005

P.C.

Heard Shri Bhobe, the learned Counsel on behalf of the appellant/accused no.1 in Sessions Case No. 50/2000 and learned P.P. Shri Sardessai on behalf of the respondent.

Admit.

Heard forthwith.

1. This appeal is filed against the Order dated 19.07.2005 of the learned Additional Sessions Judge, (I), Margao, by which, application dated 12.07.2005, filed under Section 452 of the Code of Criminal Procedure, 1973, has been rejected.

2. By the said application, the appellant/accused no.1, had sought the return of cash amount of Rs.1,39,500/-, which was admittedly seized during the course of investigations from the factory premises belonging to the appellant/accused no.1. The appellant/accused no.1 has been acquitted vide Judgment/Order dated 14.02.2005, but it appears that

accused no.2 Jacarias Rodrigues in the said Sessions case is absconding and the trial against him is still pending. The learned Additional Sessions Judge, in the impugned Order dated 19.07.2005, has declined to return the said cash amount to appellant/accused no.1 on the ground that the said accused no.2 Jacarias Rodrigues is absconding. In the Judgment of acquittal in Sessions Case no. 50/2000, dated 14.02.2005, the learned Sessions Judge had infact observed that the said amount of Rs.1,39,500/- was seized by PSI Shri Gurudas Kadam (P.W.83) on 19.07.2000, from Damodar Soda Factory belonging to the said accused no.1 under panchanama exhibit 158. The learned Additional Sessions Judge had also noted that according to the Investigation Officer, namely P.w.88, he had instructed PSI Kadam (P.w.83) to find whether there was any incriminating documentary evidence to be found in the said Damodar Soda Factory since the appellant/accused no.1 was involved in a conspiracy. However, the learned Additional Sessions Judge noted that no further investigation in respect of the said amount of Rs. 1,39,500/- was done in order to verify the suspicion of PSI Gurudas Kadam (P.w.83).

The learned Additional Sessions Judge also noted that the accused no.1 (appellant), had also made the allegation that there was an amount of Rs.7,00,000/-, which was taken away by PSI Gurudas Kadam (P.w.83) and that the said sum of Rs.1,39,500/-, was seized and was not sealed and the non-sealing of the said bag containing the cash of Rs.1,39,500/- created a doubt about the entire episode of attachment of the cash. The learned Additional Session Judge concluded by stating that the said cash of Rs.1,39,500/-, even it was taken as unaccounted, was not to have any nexus with the said case.

3. Since the said cash of Rs.1,39,500/- was admittedly seized from the factory premises belonging to the appellant/accused no.1 and the prosecution had failed to prove that there was any nexus between the seizure of the said cash and the allegations levelled against the accused in the said Sessions case, the learned Additional Sessions Judge ought to have ordered the return of the said cash to the said accused namely the appellant/accused no.1 from whose possession it was seized. If at all

necessary, same conditions could have also been imposed. On behalf of the respondent/prosecution, affidavit has been filed and in the said affidavit, it has been stated that the huge amount was paid to the hired killer to commit the crime. If that is so, there is no explanation in the affidavit as to how the said amount had remained in the possession of the appellant/accused no.1 to be seized by P.w.83, Gurudas Kadam.

4. In the light of the findings arrived at by the learned Additional Sessions Judge, in his Judgment/Order dated 14.02.2005, the said amount of Rs.1,39,500/- ought to have been returned to the appellant/accused no.1. The learned Additional Sessions Judge could not have come to a contrary conclusion in the manner he did in his Order dated 19.07.2005. As a result, the appeal is bound to succeed. The impugned Order dated 19.07.2005, is hereby set aside. Consequently, the application dated 12.07.2005, is granted. The learned Additional Sessions Judge, is hereby directed to return the said cash amount of Rs.1,39,500/- to the appellant/accused no.1 with a condition that if at all the same is required in the trial of accused no.2 Jacarias Rodrigues, that the same would be returned by the appellant/accused no.1.

N. A. BRITTO, J.

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